REMARKS

A new IDS is submitted herewith citing three new references, which were cited by the German Patent Office in prosecution of the corresponding priority application.

The Examiner maintains his rejection of Claims 1-12 (actually adding Claim 3 to this rejection), 14, 19 and 20 under 35 U.S.C. §102 as being anticipated by Radke, US Patent 4,726,352 (hereinafter Radke '352). The Examiner first states his understanding of Radke '352, in response to Applicant's previous response:

"The examiner disagrees with applicant's understanding of the prior art reference Radke and the manner in which the elements of applicant's claimed invention are met by the pivotal door apparatus disclosed in Radke.

Applicant's attention is directed to the following recitations appearing in column 5 of Radke and which are relevant to applicant's claimed invention:

> "(18) The rotation of door 26 has heretofore been described in a two step process for the purpose of simplicity: door 26 is moved from the closed position to the intermediate position as the door rotates about the first axis A, and then door 26 is moved from the intermediate position to the open position as door 26 rotates about the second axis B. It should be noted that due to gravity, the door tends to move to the open position once the user has moved the door to the intermediate position. Thus the door can be moved to

the open position with a minimal amount of effort. Alternatively, with some practice the user can easily accomplish a **smooth transition between the steps with no pause so the door moves from the closed to the open position in one continuous motion**, although the user would have to use more effort to accomplish this result.

(19) In the two step process, the first axis A is stationary and the second axis B moves in the direction shown by arrow I in FIG. 2, **as** the door moves from the closed to the intermediate position. **As** the door moves from the intermediate to the open position, the second axis B is stationary and the first axis A moves in the direction shown by arrow J in FIG. 8.

(20) **In the alternative process, however,** first axis A and second axis B are **essentially moving simultaneously;** axis A generally moves in the direction shown by arrow J in FIG. 3 and axis B generally moves in the direction shown by arrow I in FIG. 2.

Thus, contrary to applicant's assertion that the "glide members (44 and 45) move along tracking members (42 and 43) **after** the door (26) is in a completely horizontal position", the operation of the Radke door "generally moves in the direction shown by arrow J in FIG. 3 and axis B generally moves in the direction shown by arrow I in FIG. 2." As see in Figure 8 of Radke the door (26), even after it has moved into the chamber, remains in an inclined

orientation. Radke clearly states that "…first axis A and second axis B are essentially move simultaneously. Indeed, Radke provides no discussion regarding the door (26) is in "a completely horizontal position".

With regard to the pivoting axis being "disposed at a fixed position within the housing", It is noted that all the door of Radke pivots about an axis defined at the lower pivot of member (32) which is located within the housing.

For the reasons set froth herein above and for the reasons stated in the rejection of the claims herein below, the examiner maintains the position that the limitations of the invention set forth in applicant's claims are met by Radke."

The Examiner then further states that Radke '352:

"shows and discloses an apparatus, comprising:

- a housing (20) defining a useful space (14) and a stowage space (below 18);
- a pivotable door (26) closing off the useful space when the door is in a closed position and disposed at least partly in the stowage space when the door is in an at least partly opened position; and
- a guide system (42) guiding the door in a pivoting motion between the closed position and the open position;
- the guide system having:

- a pivot axis (not referenced; lower pivot of link 32) being disposed at a fixed position in the housing, and alternatively the door includes pivot axis (38) which is disposed at a fixed position in the housing (i.e. - fixed relative to guide element (44) which is located in the housing);
- a guide track (42); and at least one guide element (44) guided in the guide track, the guide system guiding the door along the guide track during a pivoting movement of the door;
- the door has an end (40) pivoting a direction of the stowage when the door is opened;
- the pivot axis (not referenced; lower pivot of link 32) is disposed in front of the stowage space (12,13) and within the housing;
- the guide element (44) is disposed away from the pivot axis and in a direction of the pivot end;
- at least one holding/latching mechanism (30) holding the door in at least one position;"

Independent Claims 1 and 20 have now been amended to clearly obviate this rejection. Claims 1 and 20 now include a first guide track attached to the door and a first guide element fixed at the pivot axis and guided in the first guide track, with the guide system guiding the door along the first guide track during a pivoting movement

of the door about said first guide element and the pivot axis, a second guide track and a second guide element fixed to the door and guided in the second guide track spatially separated from the pivot axis and movable relative to the pivot axis and the guide system guiding the second guide element along the second guide track during the pivoting movement of the door. Radke '352 does not include the two guide tracks and the two guide elements with the door including the first guide track and the door pivoting about the fixed pivot axis. Independent Claims 1 and 20 and dependent Claims 2-12, 14 and 19 clearly now are allowable over Radke '352.

The Examiner specifically states with respect to Claims 19 and 20:

"In regard to claims 19 and 20, the terms "appliance" and "oven" are deemed to be merely a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ

235(CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In regard to claim 20, the term "oven" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d67,190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478,481 (CCPA 1951)."

Applicant does not agree with the Examiner's position and certainly an "oven housing defining a cooking space" must be considered to be structure. However, without regard to the Examiner's position, Claims 19 and 20 as now amended are clearly allowable.

The Examiner rejected Claims 1-7, 9, 10 and 15-18 under 35 U.S.C. §102 as being anticipated by Allen, US Patent 646,200 (hereinafter Allen '200). The Examiner states that Allen '200:

"shows and discloses an apparatus, comprising:

- a housing defining a useful space and a stowage space;
- a pivotable door (b) closing off the useful space when the door is in a closed position and disposed

at least partly in the stowage space when the door is in an at least partly opened position; and,

- a guide system (2,8,9) guiding the door in a pivoting motion between the closed position and the open position;
- the guide system having:
- a fixed pivot axis including rollers (9) being disposed at a fixed position in the housing;
- a guide track (2); and two guide elements (3) guided in the guide track, the guide system guiding the door along the guide track during a pivoting movement of the door;
- the door has an end pivoting a direction of the stowage when the door is opened;
- the pivot axis (9) is disposed in front of the stowage space (12,13) and within the housing; and,
- the guide element (2) is disposed away from the pivot axis and in a direction of the pivot end."

As set forth above with respect to Radke '352, Allen '200 also does not include the two guide tracks and the two guide elements with the door including the first guide track and the door pivoting about the fixed pivot axis. Independent Claim 1 and dependent Claims 2-7, 9, 10 and 15-18 clearly now are allowable over Allen '200.

Likewise, the three new references cited herein in the new IDS also do not include the two guide tracks and the two guide elements with the door including the first guide

track and the door pivoting about the fixed pivot axis. Claims 1-20 as now amended also clearly are allowable over the three new references as is easily seen from the drawings, even without a translation of the specifications.

If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. In the alternative, the entry of the amendment is requested, as it is believed to place the application in better condition for appeal, without requiring extension of the field of search.

John T. Winburn
Name of Attorney Signing
Under 37 CFR 1.34

Respectfully submitted

John T. Winburn
Registration No. 26,822
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BSH Home Appliances Corp.
100 Bosch Blvd
New Bern, NC 28562
252-636-4397
Fax: 714-845-2807
john.winburn@bshg.com